BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of	)
	)
MARK LEWIS	) Group Art Unit: 2621
	)
Application No.: 09/892,553	) Examiner: Gims S. PHILIPPE
	)
Filed: June 28, 2001	)
	)
For: **LOCATION BASED IMAGE SHARING**	

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant submits herewith an Appeal Brief as required by 37 C.F.R. § 41.37. This Appeal Brief is in response to the Final Office Action dated July 11, 2008.

I.   <u>REAL PARTY IN INTEREST</u>

The real party in interest is Intel Corporation, a corporation of Delaware.

II.   <u>RELATED APPEALS AND INTERFERENCES</u>

There are no other appeals or interferences known to Appellant which relate to, directly affect or are directly affected by the Board's decision in this appeal.

III.   <u>STATUS OF THE CLAIMS:</u>

Claims 1-37 remain pending. Claims 1-37 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheridan (US Patent no. 5760917) in view of Stewart et al.

(US Patent no. 6389460), and further in view of Albanese et al. (US Patent Application Publication No. 2006/0167985 A1).

The rejections of claims 1-37 are appealed. These claims are reproduced in the attached Claims Appendix.

IV.   STATUS OF AMENDMENTS:

A Request for Reconsideration to the Non-Final Office Action was filed on March 25, 2008, but it contained no substantive amendments. A Request for Continued Examination was filed with amendments on Oct. 17, 2007; these amendments have been entered.

V.   SUMMARY OF CLAIMED SUBJECT MATTER:

Regarding independent claim 1, a method for location-based image sharing may include defining a sharing rule (Fig. 1, block 140; Fig. 3, block 360) that specifies one or more recipients (Fig. 3, block 320) with whom an image (Fig. 1, block 110) should be shared based on location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350), the location-identifying information associated with a physical location (Fig. 1, block 115) of subjects and objects captured by the image (Fig. 2, blocks 221, 220; Page 3, lines 22-25; Page 4, lines 17-25; Page 5, lines 1-25; Page 6, lines 1-6); and applying the location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350) to the sharing rule (Fig. 1, block 140; Fig. 3, block 360) to determine the one or more recipients (Fig. 3, block 320) with whom the image (Fig. 1, block 110) should be shared (Fig. 2, blocks 250, 260; Page 6, lines 7-22).

Regarding independent claim 9, a system for location-based image sharing may include a sharing rule (Fig. 1, block 140; Fig. 3, block 360) defining one or more recipients (Fig. 3, block 320) with whom an image (Fig. 1, block 110) should be shared based on location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350), the location-identifying information associated with a physical location (Fig. 1, block 115) of subjects and objects captured by the image (Fig. 2, blocks 221, 220; Page 4, lines 1-5, 17-25; Page 5, lines 1-25; Page 6, lines 1-6); and a sharing engine (Fig. 3, block 340) to apply the location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350) to the sharing rule (Fig. 4, block 360) to determine the one or more recipients (Fig. 3, block 320) with whom the image (Fig. 1, block 110) should be

shared (Fig. 2, blocks 210, 220, 230, 240, 250, 260; Page 4, lines 1-5, 17-25; Page 5, lines 1-25; Page 6, lines 1-6; Page 8, lines 15-24; Page 9, lines 1-13).

Regarding independent claim 17, a computer readable medium having computer program code stored therein (Page 4, lines 5-7) may include code that when executed on a processor causes the processor to perform a method for location-based image sharing including defining a sharing rule (Fig. 1, block 140; Fig. 3, block 360) that specifies one or more recipients (Fig. 3, block 320) with whom an image (Fig. 1, block 110) should be shared based on location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350), the location-identifying information associated with a physical location (Fig. 1, block 115) of subjects and objects captured by the image; and applying the location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350) to the sharing rule (Fig. 1, block 140; Fig. 3, block 360) to determine the one or more recipients (Fig. 3, block 320) with whom the image should be shared (Fig. 2, blocks 250, 260; Page 6, lines 7-22).

Regarding independent claim 25, a computer readable medium having computer program code stored therein (Page 4, lines 5-7) may include code that when executed on a processor causes the processor to perform a method of sharing an image (Fig. 1, block 110) having location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350) including determining a recipient (Fig. 3, block 320) of the image based upon the location-identifying information, the location-identifying information associated with a physical location (Fig. 1, block 115) of subjects and objects captured by the image; and making the image available to the recipient (Fig. 1, block 150; Fig. 2, block 270, Page 4, lines 5-16; 17-25, Page 5, lines 1-25; Page 6, lines 1-22).

Regarding independent claim 31, a method of sharing an image having location-identifying information, may include determining a recipient (Fig. 3, block 320, Fig. 2, block 260) of the image based upon the location-identifying information (Fig. 1, block 115, 120, 130; Fig. 3, block 350), the location-identifying information associated with a physical location (Fig. 1, block 115) of the image subject; and making the image available to the recipient (Fig. 1, block 150; Fig. 2, block 270; Page 3, lines 22-25; Page 4, lines 17-25; Page 5, lines 1-25; Page 6, lines 1-22.

VI.   GROUNDS OF REJECTION:

    A.   Claims 1-37 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheridan (US Patent no. 5760917) in view of Stewart et al. (US Patent no. 6389460), and further in view of Albanese et al. (US Patent Application Publication No. 2006/0167985 A1).

VII.   ARGUMENT:

    A.   <u>Claims 1, 9, 17, 25 and 31 are patentable over Sheridan in view of Stewart et al., and further in view of Albanese.</u>

        1.   <u>Stewart et al., Sheridan and Albanese et al. fail to teach the subject location of the image. Albanese et al. do not teach or suggest that the location-identifying information associated with a physical location of subjects and objects captured by the image. Thus, none of the cited references teach or suggest "the location-identifying information associated with a physical location of subjects and objects captured by the image"</u>

Appellant respectfully traverses the § 103(a) rejection of claims 1, 9, 17, 25 and 31 over <u>Sheridan in view of Stewart et al., and further in view of Albanese.</u> A *prima facie* case of obviousness has not been established, because the references as combined fail to teach or suggest all elements of the claims.

Independent Claims 1, 9, 17, 25 and 31 require, *inter alia*, that an image be shared based on "location-identifying information, the location-identifying information associated with a physical location of subjects and objects captured by the image." <u>Sheridan, Stewart et al., and Albanese et al.,</u> even if it were proper to combine them, fail to teach or suggest the method or system set forth in Claims 1, 9, 17, 25 and 31.

Page 4 of the Final Office Action admits that "Sheridan applies location identifying information as previously shown in the last office action (See Sheridan col. 5, lines 10-18, col. 6, lines 13-32, and lines 56-63), it is <u>silent about the location identifying information being associated with a physical location of the image subject</u> as newly claimed."

On Page 4 of the non-final Office Action of Nov. 13, 2007, it was admitted that a combination of Sheridan and Stewart et al. did not disclose the limitation. It was noted that

although the proposed combination of Sheridan and Stewart "discloses location identifying information (See Stewart col. 5, lines 11-31), it is silent about the physical location of subjects and objects captured by the image as newly specified in the claims." It is further asserted that However, "Albanese discloses a location-based sharing rule specifying the physical location of subjects and objects captured by the image (See Albanese paragraph [0034])."

However, on Page 5 of the Final Office Action, it is once again asserted that "Stewart discloses location identifying information being associated with a physical location of the image subject (See Stewart col. 5, lines 11-31)."

"However, Stewart discloses location identifying information being associated with a physical location of the image subject (See Stewart col. 5, lines 11-31).

Therefore, it is considered obvious that one skilled in the art at the time of the invention would recognize the advantage of modifying Sheridan's step of identifying information by incorporating Stewart's teachings wherein the location identifying information being associated with a physical location of the image subject. The motivation for performing such a modification in Sheridan is to efficiently deliver image to a user as taught by Stewart (See Stewart col. 3, lines 55-58 and col. 4, lines 6-14).

It is noted that although the proposed combination of Sheridan and Stewart discloses location identifying information (See Stewart col. 5, lines 11-31), **it is silent about the physical location of subjects and objects captured by the image as newly specified in the claims**.

However, Albanese discloses a location-based sharing rule specifying the physical location of subjects and objects captured by the image (See Albanese paragraph [0034])." [emphasis added]

> a.   Examiner's response:

Page 5 of the Final Office Action points to paragraph [0034] of Albanese et al. as allegedly teaching or suggesting that the location identifying information is associated with the physical location of subjects and objects captured by the image.

> b.   Appellant's reply:

First, the Final Office Action contradicts the Office's argument by first asserting that Stewart discloses location identifying information being associated with a physical location of

the image subject and then admitting that neither Sheridan nor Stewart et al. teach this limitation, but that Albanese et al. do.

Second, the Examiner misunderstands the meaning of location identifying information, in general. The claims had been amended to clarify this meaning, based on the Examiner's continued misunderstanding. The location identifying information, as recited in all independent claims (1, 9, 17, 25 and 31) is fully described in the specification beginning on Page 4, lines 24 *et seq.* (Also se Fig. 1, block 115.) It is described that the location identifying information identifies the location where the image was shot with the camera, and not a location where an electronic image is stored in a database, or scanned from a photograph into an electronic image, etc. In a described embodiment, if the image is shot with a camera having a GPS component, the latitude and longitude of the image <u>subject</u> may be recorded and associated with the image. In a case where there is no GPS associated with the camera, a user may manually enter the location, in a variety of formats. However, regardless of how the information is recorded, the location identifying information is associated with the physical location of the <u>subject</u> of the image, and not of a directory or other location of the <u>electronic</u> image.

Albanese et al. in the cited paragraph [0034] describe placing pictures in a specific directory and granting a user access to the directory or granting access to specific photos. File access methods are well known in the art. However, these methods are usually limited to creating access tables based on a filename, file location, or directory structure. None of these methods (which are not fully described in the reference) are remotely related to granting access based on the location of the *subject* of an image.

On Page 2 of the Final Office Action, the Examiner responds to Appellant's arguments by asserting that "to the examiner, the location where the object/subject was photographed is equivalent to the location where the image was scanned." It is assumed that the Examiner is referring to the teachings of Sheridan.

On Page 8 of the Appellant's Request for Consideration filed on March 25, 2008 it is explained that:

> "The Examiner has misunderstood the scope of the claimed invention, as well as the teachings of Albanese et al. The location-identifying information, as described and claimed, is information associated with the subject location of an image. <u>This is not the location of the actual stored electronic image, file folder, or where the image was</u>

scanned, but the location of where the image was photographed, or rather, the location of the *subject* of the image, i.e., where the objects captured by the image are located. This definition would be apparent to one of skill in the art after reading the disclosure. Applicant has explained this concept, with examples, in previous Office Action responses. While it is understood that the Examiner may read the claims broadly, the claims must be read in light of the description of the invention." [emphasis added]

The Examiner asserts that it makes no difference as to whether pictures are scanned at three different locations or the pictures are taken at three different locations and associated with three different subject locations. (See Pages 2-3 of the Final Office Action.) However, the two concepts are *not* equivalent and use of a scanned location will not result in Applicant's claimed invention.

If users scan photographs and the location of the scanner is associated with the electronic image, they cannot be shared in the same manner as described and claimed by Appellant. The location of the image subject is required and not the same as a scanner location. For instance, scanned images may also be shared based on the subject location. Suppose User 1 scans an image of Death Valley, CA on a scanner located in Fairfax, VA. User 2 scans an image of Death Valley, CA on a scanner located in Austin, TX. User 3 scans an image of Fenway Park (Boston, MA) on a scanner located in Death Valley, CA. If a rule is created to share all photos with images of Death Valley, CA then no images will be shared when looking at scanner locations. In one implementation, if the scanner location is used in the rule, the photo of Fenway Park will be mistakenly shared, because it was *scanned* in Death Valley, CA. Just because images can be scanned at a specific location and the scanner location can be automatically recorded associated with the electronic image does not mean that the images can be properly shared among users based on location identifying information that is associated with the location of the subject of the image.

The teaching of Sheridan is directed to identifying the location of the scanner for purposes of creating access rights. However, these access rights are not equivalent to sharing based on location of the subject image. Location of a scanner cannot replace the location of an image as location identifying information and result in the same invention as claimed by Appellant.

B.   Claims 2-8, 10-16, 18-24, 26-30 and 32-37 are patentable over Sheridan in view of Stewart et al., and further in view of Albanese.

    1.   Dependent Claims 2-8, 10-16, 18-24, 26-30 and 32-37 are allowable at least by virtue of their dependence from Claims 1, 9, 17, 25 and 31, respectively.

CONCLUSION

For the reasons set forth above, Appellant respectfully solicits the Honorable Board to reverse the Examiner's rejection of claims 1-37.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0221 and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: 10 Dec. 2008   / Joni D. Stutman-Horn /
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VIII.   CLAIMS APPENDIX

1. (Previously amended)   A method for location-based image sharing, comprising:

defining a sharing rule that specifies one or more recipients with whom an image should be shared based on location-identifying information, the location-identifying information associated with a physical location of subjects and objects captured by the image; and

applying the location-identifying information to the sharing rule to determine the one or more recipients with whom the image should be shared.

2. (Previously presented)   The method of claim 1, further comprising:

making the image automatically available to the determined one or more recipients.

3. (Original)   The method of claim 2, wherein making the image available comprises either automatically sending a copy of the image to the determined one or more recipients by e-mail or automatically sending a link to the image on a Web site to the determined one or more recipients.

4. (Original)   The method of claim 1, further comprising converting the location-identifying information into location data using a location database.

5. (Previously presented)   The method of claim 1 wherein the location identifying information comprises latitude and longitude coordinates.

6. (Previously presented)   The method of claim 1 wherein the image is at least one of a digital photo and a digital video.

7. (Previously presented)   The method of claim 1 wherein the sharing rule specifies at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.

8. (Original) The method of claim 1 wherein the sharing rule comprises a rule that images are only to be shared with the one or more recipients that are on a buddy list.

9. (Previously amended)   A system for location-based image sharing, comprising:

a sharing rule defining one or more recipients with whom an image should be shared based on location-identifying information, the location-identifying information associated with a physical location of subjects and objects captured by the image; and

a sharing engine to apply the location-identifying information to the sharing rule to determine the one or more recipients with whom the image should be shared.

10. (Previously presented)   The system of claim 9, further comprising:

a sending unit to make the image automatically available to the determined one or more recipients.

11. (Original) The system of claim 10, wherein the sending unit is adapted to either automatically send a copy of the image to the determined one or more recipients by e-mail or automatically send a link to the image on a Web site to the determined one or more recipients.

12. (Original) The system of claim 9, wherein the sharing engine is further adapted to convert the location-identifying information into location data using a location database.

13. (Previously amended)   The system of claim 9 wherein the location-identifying information comprises latitude and longitude coordinates.

14. (Previously amended)   The system of claim 9 wherein the image is at least one of a digital photo and a digital video.

15. (Previously amended)   The system of claim 9 wherein the sharing rule specifies at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.

16. (Original) The system of claim 9 wherein the sharing rule comprises a rule that images are only to be shared with the one or more recipients that are on a buddy list.

17. (Previously amended)   A computer readable medium having computer program code stored therein, the code when executed on a processor to cause the processor to perform a method for location-based image sharing, the method comprising:

defining a sharing rule that specifies one or more recipients with whom an image should be shared based on location-identifying information, the location-identifying information associated with a physical location of subjects and objects captured by the image; and

applying the location-identifying information to the sharing rule to determine the one or more recipients with whom the image should be shared.

18. (Previously amended)   The medium of claim 17, wherein the method further comprises making the image automatically available to the determined one or more recipients.

19. (Previously amended)   The medium of claim 18, wherein making the image available comprises either automatically sending a copy of the image to the determined one or more recipients by e-mail or automatically sending a link to the image on a Web site to the determined one or more recipients.

20. (Previously amended)   The medium of claim 17, wherein the method further comprises converting the location-identifying information into location data using a location database.

21. (Previously amended)   The medium of claim 17 wherein the location-identifying information comprises latitude and longitude coordinates.

22. (Previously amended)   The medium of claim 17 wherein the image is at least one of a digital photo and a digital video.

23. (Previously amended)   The medium of claim 17 wherein the sharing rule specifies at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.

24. (Previously amended)   The medium of claim 17 wherein the sharing rule comprises a rule that images are only to be shared with the one or more recipients that are on a buddy list.

25. (Previously amended)   A computer readable medium having computer program code stored therein, the code when executed on a processor to cause the processor to perform a method of sharing an image having location-identifying information, the method comprising:

determining a recipient of the image based upon the location-identifying information, the location-identifying information associated with a physical location of subjects and objects captured by the image; and

making the image available to the recipient.

26. (Previously amended)   The medium of claim 25, wherein making the image available comprises either automatically sending a copy of the image to the determined one or more recipients by e-mail or automatically sending a link to the image on a Web site to the determined one or more recipients.

27. (Previously amended)   The medium of claim 25, wherein the method further comprises converting the location-identifying information into location data using a location database.

28. (Previously amended)   The medium of claim 25 wherein the location-identifying information comprises latitude and longitude coordinates.

29. (Previously amended)   The medium of claim 25 wherein the image is at least one of a digital photo and a digital video.

30. (Previously amended)   The medium of claim 25 wherein the sharing rule specifies at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.

31. (Previously amended)   A method of sharing an image having location-identifying information, comprising:

determining a recipient of the image based upon the location-identifying information, the location-identifying information associated with a physical location of the image subject; and

making the image available to the recipient.

32. (Previously added)   The method of claim 31, wherein making the image available comprises at least one of automatically sending a copy of the image to the recipient by e-mail and automatically sending a link to the image on a Web site to the recipient.

33. (Previously added)   The method of claim 31, further comprising converting the location-identifying information into location data using a location database.

34. (Previously added)   The method of claim 31, wherein the location-identifying information comprises latitude and longitude coordinates.

35. (Previously added)   The method of claim 31, wherein the image is at least one of a digital photo and a digital video.

36. (Previously added)   The method of claim 31, wherein determining a recipient of the image is performed using at least one of a proximity to the location-identifying information, a set of location-identifying information and a bounding perimeter of location-identifying information.

37. (Previously added)   The method of claim 31, wherein making the image available to the recipient comprises making the image available to the recipient only if the recipient is on a buddy list.

IX.   <u>EVIDENCE APPENDIX</u>

None.

X.   <u>RELATED PROCEEDINGS APPENDIX</u>

None.